

REMARKS/ARGUMENTS**Rejections under 35 U.S.C. § 102**

On page 2 of the Office Action, the Examiner rejected claims 1 and 2 under 35 U.S.C. § 102(b) as being anticipated by Neviaser et al. (5,347,669). Applicant respectfully traverses this rejection.

Neviaser et al. discloses an infant sleeping position restraint having pads for orienting an infant on its side, the pads including loops to prevent a securement strap from sliding. The pads are characterized by providing support for an infant lying on its side and a rear pad supports the infant's head.

Applicant respectfully asserts that independent claim 1 of the application is patentably distinguishable over the Neviaser et al. reference. In order for a reference to anticipate a claim, the reference must teach every element of the claim. In the instant application, claim 1 recites:

1. An infant sleep support device comprising:

an adjustable strap member;

a plurality of movement restrictors releasably securable to said adjustable strap member; and

wherein said plurality of movement restrictors are positioned in an orientation that permits an infant to be positioned on its back between said movement restrictors.

Neviaser et al. does not anticipate claims 1 and 2 because it does not show the use of a "plurality of movement restrictors are positioned in an orientation that permits an infant to be positioned on its back between said movement restrictors." Rather, Neviaser et al. discloses using pads, including loops, for providing support to an infant lying on its side, the pads arranged

along the front and back of the infant. There is no disclosure to use a plurality of movement restrictors are positioned in an orientation that permits an infant to be positioned on its back between the movement restrictors. Therefore, Neviaser et al. does not anticipate claims 1 and 2.

Further, Neviaser et al. does not render the present claims 1 and 2 obvious because it teaches away from the claimed invention. The claims of the instant application recite plurality of movement restrictors are positioned in an orientation that permits an infant to be positioned on its back between said movement restrictors. Applicant demonstrates that the movement restrictors of the present invention, including their orientation, ensures that the infant is positioned on its back (see Figures 1-3). Thus, Neviaser et al.'s disclosure of pads for providing support to an infant lying on its side, the pads arranged along the front and back of the infant is contrary to the claimed invention.

Additionally, with respect to Figures 1 and 4, Neviaser et al. discloses that the illustrated pads are disadvantaged by the difficulty in preventing sliding over the infant's face, causing possible strangulation. For this reason, Neviaser et al. states that using the pads without the integrated loops is problematic. Applicant's invention, as illustrated in Figures 1-3 of the present invention, discloses an infant sleep support quite different from the infant sleeping position restraint discussed in Neviaser et al.

Therefore, since Neviaser et al. fails to teach or disclose the use of a plurality of movement restrictors are positioned in an orientation that permits an infant to be positioned on its back between said movement restrictors, Applicant respectfully submits Neviaser et al. does not anticipate or render obvious any of the pending claims. Accordingly, claims 1 and 2 are allowable in view of this reference and Applicant respectfully requests a withdrawal of this rejection.

On page 2 of the Office Action, the Examiner also rejected claims 5, 6, 8 and 12 under 35 U.S.C. § 102(b) as being anticipated by McGrath-Saleh (4,802,244). Applicant respectfully traverses this rejection.

McGrath-Saleh discloses a premature infant bedding having a harness that includes internal Velcro strips. The Velcro strips are characterized by being secured internal to the harness and are used to secure the harness to the tubular wall.

Applicant respectfully asserts that independent claims 5 and 12 of the application is patentably distinguishable over the McGrath-Saleh reference. In order for a reference to anticipate a claim, the reference must teach every element of the claim. In the instant application, claims 5 and 12 recite, respectively:

5. An infant sleep support device comprising:
 - a clothing article;
 - a first attachment member positioned on an exterior of said clothing article;
 - a second attachment member positioned on said exterior of said clothing article opposite said first attachment member;
 - a first movement restrictor having a third attachment member for releasably engaging said first attachment member on said exterior of said clothing article; and
 - a second movement restrictor having a fourth attachment member for releasably engaging said second attachment member on said exterior of said clothing article.
12. A method for forming an infant sleep support, said method including the steps of:
 - attaching a first attachment member to an exterior of a clothing article;
 - attaching a second attachment member to said exterior of said clothing article opposite said first attachment member; and

providing at least one movement restrictor having a third attachment member for releasably engaging the first or second attachment member on said exterior of said attachment member.

McGrath-Saleh does not anticipate claims 5, 6, 8 and 12 because it does not show the use of attachment members and/or movement restrictors "on an exterior of said clothing article." Rather, McGrath-Saleh discloses using a harness having Velcro strips arranged internally in the harness. There is no disclosure to use attachment members and/or movement restrictors "on an exterior of said clothing article." Therefore, McGrath-Saleh does not anticipate claims 5, 6, 8 and 12.

Further, McGrath-Saleh does not render the present claims 5, 6, 8 and 12 obvious because it teaches away from the claimed invention. The claims of the instant application recite attachment members and/or movement restrictors "on an exterior of said clothing article." Applicant demonstrates that the movement restrictors of the present invention, including their orientation external to the article of clothing, ensures that the infant is positioned on its back (see Figures 1-3). Thus, McGrath-Saleh's disclosure of a harness with internal Velcro straps is contrary to the claimed invention.

Additionally, with respect to Figures 1 and 8, McGrath Saleh discloses that the illustrated Velcro straps are disadvantaged by the difficulty in providing a tight fit (see column 11, lines 26-31). For this reason, McGrath-Saleh states that sagging is permitted. Applicant's invention, as illustrated in Figures 1-3 of the present invention, discloses an infant sleep support quite different from the premature infant bedding discussed in McGrath-Saleh.

Therefore, since McGrath-Saleh fails to teach or disclose the use of attachment members and/or movement restrictors "on an exterior of said clothing article," Applicant respectfully

submits McGrath-Saleh does not anticipate or render obvious any of the pending claims. Accordingly, claims 5, 6, 8 and 12 are allowable in view of this reference and Applicant respectfully requests a withdrawal of this rejection.

Rejections under 35 U.S.C. § 103

On page 3 of the Office Action, the Examiner has also rejected claims 3 under 35 U.S.C. § 103(a) as being unpatentable over Neviaser.

The Examiner states that it would be obvious to take the hook and loop fasteners of the pads of the infant sleeping position restraint of Neviaser and substitute snaps, etc. to arrive at Applicant's invention (Office Action, page 3). However, there is no motivation to seek an improvement in the infant sleeping position restraint for Neviaser, which discloses a securement strap passing through loops on the pads to increase stability and security. In particular, Neviaser fails to disclose snaps or other securement structures in an arrangement at or on the pads of the infant sleeping position restraint. Thus, there is no motivation to combine the pads of Neviaser with snaps, as the combination would result in a pad that is contrary to the disclosure of Neviaser to have pads that can be spaced an appropriate user-defined distance apart as a result of the use of Velcro. Column 5, lines 33-35. Therefore, these references teach away from combining them.

Further, Applicant submits that the pads of Neviaser would result in pads that lack the ability to be spaced appropriately and freely in favor of a predetermined spacing arrangement. Therefore, Neviaser fails to provide an enabling disclosure for the use of snaps and does not provide sufficient disclosure for providing pads with snaps arranged thereon. Applicant's invention, and specifically the combined use of movement restrictors and snaps with the snaps arranged both on the movement restrictors and supporting article, shows a dramatically improved

infant sleep support when compared with the infant sleeping position restraint disclosed in Neviaser.

Even if these references were properly combinable, Neviaser does not disclose or render obvious Applicant's invention. Specifically, this combination of references and the reasons given by the Examiner for the combination do not disclose what is required by the Applicant's claims – movement restrictors releasably securable to an adjustable strap member by snaps. This combination also does not teach or suggest a pad expressly or inherently having the claimed requirements of Applicant's movement restrictors. It is advantageous to provide a movement restrictor that has snaps arranged thereon. One advantage to using the movement restrictors of the present invention is that the snaps permit consistent placement of the movement restrictors with respect to the infant.

The pads having hook and loop fasteners of Neviaser could not be used to provide a consistent pre-defined placement, and subsequent replacement of the pads in relation to the infant. Thus the pads of Neviaser are unsuitable.

The Examiner has failed to establish a prima facie case for obviousness of claim 3. It is the Examiner's burden to show that the prior art relied upon coupled with the knowledge generally available in the art at the time of the invention must contain a suggestion or incentive that would have motivated one of ordinary skill in the art to combine references. As Applicant has set forth throughout this response, the distinctive differences between the individual references makes the combination of these references implausible. The Examiner must also show that the proposed combination must have a reasonable expectation of success. It is inappropriate for the Examiner to use the present application as a motivation to combine the references. This inappropriate combination, taking bits and pieces from each reference in an

attempt to create Applicant's invention, is exactly what the Examiner has done with these references.

Therefore, since Neviaser fails to teach or disclose a pad including snaps, Applicant respectfully submits it does not anticipate or render obvious any of the pending claims.

Thus, Applicant respectfully requests reconsideration and withdrawal of the § 103 rejection as to this claim.

On page 3 of the Office Action, the Examiner has also rejected claim 4 under 35 U.S.C. § 103(a) as being unpatentable over Neviaser in view of Wilkinson (6,721,974).

Applicant respectfully traverses the rejections. Applicant respectfully submits that the combination of these references is not proper, as the references do not provide a motivation to combine them. Even if properly combined, the combination does not render the claims obvious. At the outset, there is no motivation within the references to combine them. Neviaser discloses pads that can be spaced an appropriate user-defined distance apart as a result of the use of Velcro.

The Examiner states that it would be obvious to take the pads of Neviaser with the inflatable wall structure of Wilkinson to arrive at Applicant's invention (Office Action, page 3). However, there is no motivation to seek an improvement in the pads for Neviaser. Wilkinson discloses an inflatable wall structure for a bed. In particular, Neviaser fails to disclose either an inflatable pad or wall structure in an arrangement around an infant. Thus, there is no motivation to combine the pads of Neviaser with the inflatable wall structure of Wilkinson, as the combination would result in a pad that is contrary to the disclosure of Neviaser to have pads arranged on the front and back of the infant that are stiff enough to restrict movement. Therefore, these references teach away from combining them.

Further, Applicant submits that the pads of Neviaser would result in pads that lack the ability to have straps stitched thereto. Therefore, Neviaser fails to provide an enabling disclosure for inflatable pads and does not provide sufficient disclosure for providing pads that are capable of being inflated. Applicant's invention, and specifically the use of inflatable movement restrictors, shows a dramatically improved movement restrictor when compared with the pads disclosed in Neviaser.

Even if these references were properly combinable, Neviaser alone or in combination with Wilkinson does not disclose or render obvious Applicant's invention. Specifically, this combination of references and the reasons given by the Examiner for the combination do not disclose what is required by the Applicant's claims – a plurality of inflatable movement restrictors. This combination also does not teach or suggest a pad expressly or inherently having the claimed requirements of Applicant's movement restrictors. It is advantageous to provide a movement restrictor that is inflatable and has the ability to be deflated. One advantage to using the movement restrictors of the present invention is that minimal storage space is required. (Page 8, lines 20-22). The pads of Neviaser could not be used to provide for inflation and subsequent deflation. Thus the pads of Neviaser are unsuitable.

The Examiner has failed to establish a prima facie case for obviousness of claim 4. It is the Examiner's burden to show that the prior art relied upon coupled with the knowledge generally available in the art at the time of the invention must contain a suggestion or incentive that would have motivated one of ordinary skill in the art to combine references. As Applicant has set forth throughout this response, the distinctive differences between the individual references makes the combination of these references implausible. The Examiner must also show that the proposed combination must have a reasonable expectation of success. It is

inappropriate for the Examiner to use the present application as a motivation to combine the references. This inappropriate combination, taking bits and pieces from each reference in an attempt to create Applicant's invention, is exactly what the Examiner has done with these references.

Therefore, since Neviaser, in view of Wilkinson fails to teach or disclose a pad capable of inflation, Applicant respectfully submits it does not anticipate or render obvious any of the pending claims.

Thus, Applicants respectfully request reconsideration and withdrawal of the § 103 rejection as to these claims.

On page 4 of the Office Action, the Examiner has also rejected claims 7 and 9 under 35 U.S.C. § 103(a) as being unpatentable over McGrath-Saleh, and claims 10 and 11 under 35 U.S.C. § 103(a) as being unpatentable over McGrath-Saleh in view of Verbovsky et al. (6,467,840).

Applicant respectfully traverses the rejections. Applicant respectfully submits that the combination of these references is not proper, as the references do not provide a motivation to combine them. Even if properly combined, the combination does not render the claims obvious. At the outset, there is no motivation within the references to combine them. McGrath-Saleh discloses a premature infant bedding having a harness that includes internal Velcro strips. Specifically, this construction allows for an attachment to a tubular wall.

The Examiner states that it would be obvious to take the hook and loop attachment members of McGrath-Saleh and substitute them with snaps to arrive at Applicant's invention (Office Action, page 4). However, there is no motivation to seek an improvement in the harness of McGrath-Saleh which discloses a harness having hook and loop fasteners arranged internally.

In particular, McGrath-Saleh fails to disclose either snaps or other securement structure in an arrangement internal to the harness. Thus, there is no motivation to combine the harness of McGrath-Saleh with snaps, as the combination would result in a harness that is contrary to the disclosure of McGrath-Saleh to have a harness with internal hook and loop fasteners to adjust the dimensions of the harness. Therefore, these references teach away from combining them.

Further, Applicant submits that the harness of McGrath-Saleh would result in a harness that lacks adjustability in favor of fixed positioning. Therefore, McGrath-Saleh fails to provide an enabling disclosure for a harness with snaps and does not provide sufficient disclosure for providing snaps arranged internal to the harness. Applicant's invention, and specifically the combined use of snaps and attachment members, shows a dramatically improved infant sleep support device when compared with the harness disclosed in McGrath-Saleh.

Even if these references were properly combinable, McGrath-Saleh does not disclose or render obvious Applicant's invention. Specifically, this combination of references and the reasons given by the Examiner for the combination do not disclose what is required by the Applicant's claims – attachment members releasably securable by snaps. This combination also does not teach or suggest a harness expressly or inherently having the claimed requirements of Applicant's infant sleep support device. It is advantageous to provide attachment members that snap together external to the clothing article. One advantage to using the snaps of the present invention is that the movement restrictors are external to the clothing article. The harness of McGrath-Saleh could not be used to provide external snaps or even external hook and loop fasteners. Thus the harness of McGrath-Saleh is unsuitable.

The Examiner has failed to establish a prima facie case for obviousness of claims 7 and 9. It is the Examiner's burden to show that the prior art relied upon coupled with the knowledge

generally available in the art at the time of the invention must contain a suggestion or incentive that would have motivated one of ordinary skill in the art to combine references. As Applicant has set forth throughout this response, the distinctive differences between the individual references makes the combination of these references implausible. The Examiner must also show that the proposed combination must have a reasonable expectation of success. It is inappropriate for the Examiner to use the present application as a motivation to combine the references. This inappropriate combination, taking bits and pieces from each reference in an attempt to create Applicant's invention, is exactly what the Examiner has done with these references.

Therefore, since McGrath-Saleh fails to teach or disclose a harness, including external snaps, Applicant respectfully submits it does not anticipate or render obvious any of the pending claims.

Thus, Applicants respectfully request reconsideration and withdrawal of the § 103 rejection as to these claims.

On page 4 of the Office Action, the Examiner has also rejected claims 10 and 11 under 35 U.S.C. § 103(a) as being unpatentable over McGrath-Saleh in view of Verbovsky et al. (6,467,840).

Applicant respectfully traverses the rejections. Applicant respectfully submits that the combination of these references is not proper, as the references do not provide a motivation to combine them. Even if properly combined, the combination does not render the claims obvious. At the outset, there is no motivation within the references to combine them. McGrath-Saleh discloses a retaining wall for supporting a harness, the retaining wall formed by sewn

connections (30 and 34). Specifically, this construction allows for the use of a cushioning substance (polyester fiber) that dries more quickly than cotton.

The Examiner states that it would be obvious to take the retaining wall of McGrath-Saleh with the cushioning positioner of Verbovsky et al. to arrive at Applicant's invention (Office Action, page 4). However, there is no motivation to seek an improvement in the retaining wall for McGrath-Saleh, which discloses a lambskin tube having sewn closures (30 and 34) to form the retaining wall. Verbovsky et al discloses a discrete chambers of cushioning media in a cushioning positioner. In particular, McGrath-Saleh fails to disclose either a series of discrete chambers or inflation valves in an arrangement within the retaining wall. Thus, there is no motivation to combine the retaining wall of McGrath-Saleh with the cushioning positioner having discrete chambers of Verbovsky et al., as the combination would result in a retaining wall that is contrary to the disclosure of McGrath-Saleh to have an elongate horseshoe shaped tube. Therefore, these references teach away from combining them.

Further, Applicant submits that the retaining wall of McGrath-Saleh would result in a retaining wall that lacks a single chamber in favor a series of chambers. Therefore, McGrath-Saleh fails to provide an enabling disclosure for a series of inflatable chambers and does not provide sufficient disclosure for providing a single chamber that is inflatable. Applicant's invention, and specifically the use of a movement restrictor that is inflatable, shows a dramatically improved infant sleep support when compared with the premature infant bedding disclosed in McGrath-Saleh.

Even if these references were properly combinable, McGrath-Saleh alone or in combination with Verbovsky et al. does not disclose or render obvious Applicant's invention. Specifically, this combination of references and the reasons given by the Examiner for the

combination do not disclose what is required by the Applicant's claims – inflatable movement restrictors secured externally to the clothing article. This combination also does not teach or suggest a retaining wall expressly or inherently having the claimed requirements of Applicant's movement restrictors. It is advantageous to provide a movement restrictor that is inflatable and is arranged externally to the clothing article. One advantage to using the inflatable movement restrictors of the present invention is reducible size and enhanced portability. The retaining wall of McGrath-Saleh could not be used to provide a movement restrictor that is inflatable and external to the clothing article to which it is attached. Thus the retaining wall of McGrath-Saleh is unsuitable.

The Examiner has failed to establish a prima facie case for obviousness of claims 10 and 11. It is the Examiner's burden to show that the prior art relied upon coupled with the knowledge generally available in the art at the time of the invention must contain a suggestion or incentive that would have motivated one of ordinary skill in the art to combine references. As Applicant has set forth throughout this response, the distinctive differences between the individual references makes the combination of these references implausible. The Examiner must also show that the proposed combination must have a reasonable expectation of success. It is inappropriate for the Examiner to use the present application as a motivation to combine the references. This inappropriate combination, taking bits and pieces from each reference in an attempt to create Applicant's invention, is exactly what the Examiner has done with these references.

Therefore, since McGrath-Saleh, in view of Verbovsky et al. fails to teach or disclose an inflatable movement restrictor that is secured on an external portion of a clothing article, Applicant respectfully submits it does not anticipate or render obvious any of the pending claims.


Thus, Applicants respectfully request reconsideration and withdrawal of the § 103 rejection as to these claims.

Conclusion

Having analyzed the rejections cited against the claims, it is urged that the present claims are in condition for allowance. A favorable reconsideration is requested. The Examiner is invited to contact the undersigned attorney to discuss any matters pertaining to the present application.

Respectfully submitted,

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Vernice V. Freebourn

August 24, 2004

Date